

CORRESPONDENCE
FILE

DOCKET FILE COPY ORI ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 27 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

C.F. Communications Corp., et. al.,

Complainants,

v.

Century Telephone of Wisconsin, Inc.,
et. al.,

Defendants.

EB Docket No. 01-99

File No. E-93-49

To: **Arthur I. Steinberg**
Administrative Law Judge

**COMPLAINANT'S OPPOSITION TO DEFENDANT
SOUTHWESTERN BELL TELEPHONE COMPANY'S AMENDED MOTION
TO DISMISS OR, IN THE ALTERNATIVE, COMPEL DISCOVERY**

Because it prefers that Complainant New York City Telecommunications Company, Inc. ("NYC Telecom") prepare its case for it and, in so doing, limit its damages for wrongfully assessed EUCL charges, Southwestern Bell Telephone Company ("SBC") has moved to compel¹ further responses to four of its interrogatories propounded to NYC Telecom. As an initial matter, SBC's motion should be rejected because SBC failed, for at least the fourth time, to make any attempt to resolve this discovery dispute prior to filing its motion, contrary to the express directive to the parties at the May 24, 2001 prehearing

¹ SBC's motion is entitled "Amended Motion to Dismiss Case Or, In the Alternative, to Compel Discovery." Despite this title, however, nowhere in its memorandum or elsewhere does SBC argue that NYC Telecom's complaint should be dismissed or cite any authority in support of such a dismissal. In addition, there does not appear to be a Commission rule specifically providing for motions to dismiss. Accordingly, SBC's motion should be treated solely as a motion to compel further responses to Interrogatories 10, 11, 12, and 13.

No. of Copies rec'd
LWA/DOE

conference. Moreover, even if SBC's motion is considered, it should be rejected because it runs contrary to both the Commission's rules and the Federal Rules of Civil Procedure upon which the rules are based, which permit parties to produce business records in response to interrogatory requests and gather evidence supporting their damages claim during discovery. SBC's motion also runs contrary to Your Honor's recent discovery ruling, which does not require disclosure of expert witnesses until the exhibit exchange date in this proceeding.²

I. SBC's Motion Should Be Denied Because SBC's Counsel Did Not Meet And Confer With NYC Telecom's Counsel Before Filing The Motion

SBC's motion should be denied because SBC's counsel made no attempt to resolve this discovery dispute before filing its motion, in direct violation of Your Honor's express directive to the parties at the May 24, 2001 prehearing conference. At that conference, Your Honor emphasized the mandatory nature of the "meet and confer" requirement:

² Before filing its Amended Motion, SBC filed its original "Motion to Dismiss Case or, In the Alternative, to Compel Discovery" on July 18, 2001. Because SBC replaced that motion with the current Amended Motion, NYC Telecom will not respond to allegations contained in the original motion, except to take issue with the statements regarding NYC Telecom's compliance with its discovery obligations. From the time NYC Telecom's counsel received the discovery requests from SBC, NYC Telecom's counsel made every effort to provide substantive responses in a timely fashion. Gathering the information needed for such responses was delayed, however, because a key employee at NYC Telecom with knowledge of the responsive documents and information was out of town and unreachable due to a family illness. NYC Telecom's counsel informed SBC's counsel of this delay and SBC's counsel then agreed to an extension. While counsel never agreed to a specific date for the responses, NYC Telecom's counsel kept SBC informed of the status of NYC Telecom's responses. Nevertheless, counsel for SBC contacted NYC Telecom's counsel on July 17, 2001 threatening to file a motion to compel if NYC Telecom did not immediately respond. In a conversation with counsel for SBC that day, NYC Telecom's counsel indicated only that the responses would be provided the following day, July 18, 2001, rather than "first thing in the morning" as SBC's counsel claims. Contrary to SBC's suggestion in the present Amended Motion that NYC Telecom's responses to the interrogatories from SBC were sent out after, and because of, service of SBC's original motion, NYC Telecom's responses were already drafted and mailed before NYC Telecom's counsel received SBC's motion, and were faxed out soon thereafter.

If a [discovery] dispute arises I want you to make a good faith attempt to try to resolve the dispute among yourselves or between yourselves, not just a token effort but a real effort. Don't ask me for any kind of discovery ruling before you genuinely attempt to reach agreement yourselves...If you absolutely can't reach an agreement then you file something with me and I'll settle the matter...In that v[e]in, if you file a pleading with me with respect to discovery in order to contain the certification that you attempted to work out your differences but just absolutely couldn't do it... I like to have it because it gives people maybe second thoughts about coming to me initially.

Transcript of May 24, 2001 Prehearing Conference at 38-39.³

SBC's counsel never contacted NYC Telecom's attorneys to discuss the various faults SBC found in NYC Telecom's responses to Interrogatories 10, 11, 12, and 13. Moreover, *this is not an isolated failure*, as this motion is one of *four* pending discovery motions filed by SBC for which SBC has utterly failed to conference with counsel for SBC in order to resolve or narrow the areas of dispute. *See also* SBC's Motion Opposing the Taking of [Rule 30(b)(6)] Deposition (filed July 13, 2001); SBC's Motion Opposing the Taking of [Rule 30(b)(6)] Deposition (filed July 17, 2001); SBC's Motion Opposing the Taking of Expert Deposition (filed July 18, 2001). Because, in filing this motion, SBC failed once again to make any effort to "meet and confer," its motion should be denied.

II. Even if SBC's Motion Is Considered, It Should Be Denied Because NYC Telecom Properly Responded to Interrogatories 10, 11, and 13 By Referring SBC to NYC Telecom's Business Records and Phone Bills

Believing that NYC Telecom should prepare SBC's case for it, NYC Telecom complains because NYC Telecom has elected to produce its business records in response to Interrogatories 10, 11, and 13. For example, Interrogatory Number 10 seeks a description of NYC Telecom's evidence in support of its damages claim:

10. With respect to your claim for damages in this formal complaint case, please provide a description of all documents, data compilations, and tangible things

³ Copies of the relevant pages from the transcript of the prehearing conference are annexed as Exhibit A to this Memorandum.

in your possession, custody, or control that are relevant to that claim. Such description shall include for each document:

- (a) The date it was prepared, mailed, transmitted, or otherwise disseminated;
- (b) The author, preparer, or other source;
- (c) The recipient(s) or intended recipient(s);
- (d) Its physical location; and
- (e) A description of its relevance to the matters contained in the complaint. *See Commission Rule 1.721(a)(10)(ii).*

In response, NYC Telecom identified the documents in its possession, including phone bills, service records, coin collection records, and cancelled checks. Instead of describing these documents, however, which are voluminous, NYC Telecom made the documents themselves available to SBC for inspection, copying, and review. In response to Interrogatories 11 and 13, NYC Telecom followed this same approach.⁴

While SBC complains that this response “amounts to nothing more than ‘go fish,’” this approach is entirely appropriate under both the Commission’s rules and the Federal Rules upon which the Commission’s rules are based. Nothing in these rules requires NYC Telecom to analyze its business records and phone bills and create a summary document for SBC, when SBC can just as easily analyze those business records and create the summary document itself.

As the FCC has repeatedly recognized, the Commission rule addressing interrogatories and responses to interrogatories, 47 C.F.R. § 1.325, is modeled, like many of the Commission’s procedural and discovery rules, on the Federal Rules of Civil Procedure. In opinions accompanying amendments to the Commission’s rules, the FCC has noted that its rules are modeled on the Federal Rules. For example, in the *Amendment of Part I, Rules of Practice and Procedure to Provide for Certain Changes in the Commission’s*

⁴ Complainant’s Responses and Objections to Defendant Southwestern Bell Telephone Company’s First Set of Interrogatories to Complainant are attached as Exhibit B.

Discovery Procedures in Adjudicatory Hearings, Memorandum Opinion and Order, 91 F.C.C. 2d 527 ¶ 3 (1982), the Commission stated that “[t]he Commission’s very broad and general discovery rules are derived in part from the Federal Rules of Civil Procedure, which provide for both discovery and the production and preservation of evidence.” Likewise, in *Amendment of Part 1 of the Rules of Practice and Procedure to Provide for Discovery Procedures*, Report and Order, 11 F.C.C. 2d 185 ¶ 3 (1968), the Commission stated that that Sections 1.311-1.325 derive from the Federal Rules of Civil Procedure.⁵ The Commission has recognized this relationship between its rules and the Federal Rules in other circumstances as well. For example, in *In re Faith Center, Inc.*, Memorandum Opinion and Order, 82 F.C.C. 2d 1 n. 36 (1980), the Commission stated that “[t]he Commission’s discovery procedures derive in part from the Federal Rules of Civil Procedure.”

Rule 33(d) of the Federal Rules of Civil Procedure permits parties responding to interrogatories to refer the party seeking the information to the business records:

[w]here the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the

⁵ See also *In re Jupiter Assocs.*, Memorandum Opinion and Order, 6 F.C.C. 2d 13 ¶ 9 (rejecting informal interrogatory procedures used by party because procedures did not comply with Commission’s rules or Rules 26 through 37 of the Federal Rules of Civil Procedure) (1966); *Amendment of Discovery Procedures*, Order, 13 F.C.C. 2d 909 ¶ 5 (1968) (noting that changes in Commission rule 1.323 were based on a revision of Rule 33 of the Federal Rules of Civil Procedure); *Amendment of Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers*, Report and Order, 8 F.C.C.R. 756196 n. 9 (noting that “the Federal Rules [of Civil Procedure] can provide useful guidance in drafting our [the Commission’s] procedures”); *General Services Administration v. AT&T*, 2 F.C.C.R. 3574 n. 22 (1987) (looking to court decisions under the Federal Rules of Civil Procedure in determining service of process requirements in FCC proceeding).

party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Fed. R. Civ. P. 33(d) (emphasis added).

NYC Telecom's responses to Interrogatories 10, 11, and 13 comply with this approach. NYC Telecom responded to these interrogatories by producing its relevant business records. Once SBC reviews these records, it can create the same summary that it wants NYC Telecom to create for it from those very business records.⁶ Accordingly, SBC's motion to compel is without merit and should be denied.

III. NYC Telecom Properly Responded to Interrogatory 11 Because the Commission's Rules Permit Complainants to Gather Evidence Supporting Their Damages Claim During Discovery

NYC Telecom's response to Interrogatory Number 11 is also sufficient because the Commission's rules specifically permit complainants to gather evidence supporting their damages claim during discovery. In response to this interrogatory, which seeks information on NYC Telecom's evidence in support of its damages claim, NYC Telecom provides information on its damages evidence and on the methodology that it will use to compute its damages, but states that a complete, accurate, and detailed computation of damages cannot be completed until SBC produces the documents and information within its control regarding NYC Telecom's phone lines and payments to SBC.

This response is entirely appropriate under the Commission's rules, which specifically recognize that complainants may need to gather evidence and documents needed to support their claims for damages from other parties through the discovery process. Rule 1.722, which addresses damages, states that complainants seeking damages

⁶ Moreover, NYC Telecom believes that SBC has this very information in its own records.

shall include, within either their complaint or supplemental complaint, *either* a computation *or* an explanation of the information needed:

- (1) A computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to determine the amount of such damages; *or*
- (2) An explanation of:
 - (i) *The information not in the possession of the complaining party that is necessary to develop a detailed computation of damages;*
 - (ii) Why such information is unavailable to the complaining party;
 - (iii) The factual basis the complainant has for believing that such evidence of damages exists; and
 - (iv) A detailed outline of the methodology that would be used to create a computation of damages with such evidence.

47 C.F.R. § 1.722(c)(1),(2) (emphasis added).

This rule clearly recognizes that complainants may not have in their possession the information necessary to develop a detailed computation of damages but may have to obtain that information from other parties. Discovery is the means authorized by the Commission's rules by which a complainant obtains that information. NYC Telecom's response to Interrogatory Number 11 merely follows this rule and is therefore appropriate under the Commission's rules.

IV. NYC Telecom's Response to Interrogatory 12 Is Appropriate Especially In Light of the Recent Discovery Ruling in This Case

Finally, SBC contends that NYC Telecom's response to Interrogatory 12, which seeks the identity of any expert witnesses that NYC Telecom intends to call, is insufficient. In response to this interrogatory, which seeks the identity of any witnesses NYC Telecom intends to call at the hearing in this matter, NYC Telecom stated:

Complainant states that it has not yet determined what witnesses, either expert or lay, that it will call at the hearing in this matter or the subject matter on which such witnesses will testify. When this determination is made, Complainant will provide this information to Defendant in a Supplemental Response to this Interrogatory.

SBC contends that this response is insufficient because discovery closes on August 3, 2001 and any expert witnesses must be identified now in order for SBC to rebut their testimony. SBC's contention, however, runs contrary to the Your Honor's July 23, 2001 discovery ruling in this case. In the memorandum opinion and order released that date, the Your Honor upheld *SBC's own refusal* to identify its witnesses, stating that:

[t]he identity of witnesses to be called at the hearing need not be disclosed until the exhibit exchange date in this proceeding. *Order*, FCC 01M-13, released May 30, 2001.

Thus, SBC's current assertion that NYC Telecom's response to Interrogatory 12 is insufficient runs directly contrary to this July 23, 2001 ruling upholding SBC's own failure to disclose its witnesses.⁷ Moreover, while SBC suggests that its ability to rebut any expert testimony may be hindered by NYC Telecom's failure to disclose its experts, SBC could have protected its ability to depose any experts ultimately identified by filing a Notice of Deposition of any and all experts yet to be disclosed. This is the approach that NYC

⁷ SBC refused to provide any information in response to NYC Telecom's interrogatory asking SBC to identify its own expert witnesses and evidence. SBC instead objected to the interrogatory, claiming that the discovery was not relevant or reasonably calculated to lead to the discovery of admissible evidence and that the interrogatory requesting this information was "unduly burdensome," "oppressive" and "overly broad." See NYC Telecom's Objections and Responses to Complainant's First Set of Interrogatories, No. 34. NYC Telecom's response to the similar interrogatory from SBC, by comparison, notified SBC that although NYC Telecom has not yet decided whether to have an expert testify, such information will be provided in a Supplemental Interrogatory Response once this determination is made.

Telecom itself has taken.⁸ Instead of protecting its interests, however, SBC chose instead to file a motion to compel. This motion, for the reasons stated above, is without merit. Accordingly, SBC's motion to compel must be rejected.⁹

CONCLUSION

Because SBC has failed again to make any attempt to resolve this discovery dispute before moving to compel, its motion should be denied on that ground alone. Even if SBC's motion is considered, it should be denied because it runs contrary to both the Commission's rules and the Federal Rules of Civil Procedure, and Your Honor's recent discovery ruling, which does not require disclosure of expert witnesses until the exhibit exchange date in this proceeding. NYC Telecom therefore respectfully requests that SBC's motion be denied.

⁸ See Notice of Deposition served by NYC Telecom on July 12, 2001 in this action.

⁹ SBC's complaints about NYC Telecom's responses are particularly meritless considering SBC's own complete failure to respond to any of the discovery requests propounded to it by NYC Telecom. Indeed, although NYC Telecom has responded to SBC's discovery requests by making all the documents in its possession, custody, or control available for SBC's inspection, copying, and reviewing, SBC responded to the discovery requests served on it by objecting to each and every interrogatory and document request. Indeed, SBC failed to answer a single interrogatory or document request, forcing NYC Telecom to file a motion to compel, which was granted in large part by the Your Honor on July 23, 2001. See Memorandum Opinion and Order, FCC 01M-25 (July 23, 2001) (noting that "nearly all of SBC's repetitive and "boilerplate" objections were completely frivolous and that "[s]uch tactics border on an abuse of the Commission's processes and should not be repeated").

Dated: July 27, 2001

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202)785-9700
Attorneys for Complainant

By: Katherine J. Henry
Katherine J. Henry
Albert H. Kramer

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2001, a copy of the foregoing Complainant's Opposition to Defendant Southwestern Bell Telephone Company's Amended Motion to Dismiss Case Or, In the Alternative, Compel Discovery was served by facsimile and first-class mail, postage prepaid, on William A. Brown and Davida M. Grant, Southwestern Bell Telephone Company, 1401 I Street, NW, Suite 1100, Washington, DC 20005, and by hand-delivery and/or first-class mail, postage prepaid, as indicated below, on the following parties:

By Hand-Delivery:

The Honorable Arthur I. Steinberg
Your Honor
Federal Communications Commission
445 12th Street, S.W.
Room 1-C861
Washington, DC 20554

Magalie Roman Salas, Secretary
Office of the Commission Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554
(Original and Six Copies)

Tejal Mehta, Esquire
Federal Communications Commission
Market Disputes Resolution Division
Enforcement Bureau
445 12th Street, S.W.
Washington, D.C. 20554

David H. Solomon, Chief
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

By First-Class Mail, Postage Prepaid:

Michael Thompson, Esquire
Wright & Talisman, P.C.
1200 G Street, N.W.
Washington, D.C. 20005

John M. Goodman
Verizon
1300 I Street, NW 400W
Washington, DC 20005

Sherry A. Ingram
Verizon
1320 North Court House Road
Arlington, VA 22201

Rikke Davis, Esquire
SBC Corporation
401 9th Street, N.W., Suite 400
Washington, D.C. 20004

Mary Sisak, Esquire
Robert Jackson, Esquire
Blooston, Mordkowsky, Dickens, Duffy & Prendergast
2120 L Street, N.W., Suite 300
Washington, D.C. 20037

A handwritten signature in black ink, appearing to read "Charles V. Mehler III", is written over a horizontal line.

Charles V. Mehler III

C.F. Communications v. Century Telephone

May 24, 2001

Page 1 to Page 109

**CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:**

HERITAGE REPORTING CORPORATION

1220 L Street, N.W.

Suite 600

Washington, DC 20005

Phone: 202-628-4888

FAX: 202-371-0935

Page 37

(1) MR. GOODMAN: Your Honor, just to be clear about
 (2) one thing, I would guess that a number of the
 (3) interrogatories from the Complainants to us are going to ask
 (4) for billing information and payment history about specific
 (5) customers of ours and that is normally not the kind of
 (6) information that we give to the world because it is - I
 (7) mean under law it is not, you know, anything that we are
 (8) permitted to give to the world.
 (9) If that is the process, the procedure that you
 (10) want, that's fine but I just wanted to bring up the issue
 (11) that there is a kind of a privacy concern about disclosing
 (12) customer -
 (13) JUDGE STEINBERG: Well, what you can do is you can
 (14) - we can work out an arrangement with the individual -
 (15) with the party that asks for the information and you can use
 (16) number one, this is the information - number one is this
 (17) and number two is that, A, B, C, D, John Doe or whatever -
 (18) MR. GOODMAN: That's right.
 (19) JUDGE STEINBERG: And you keep the keys to
 (20) yourself. I don't need the keys. Does anybody have any
 (21) problem with that? That way there's - confidentiality
 (22) isn't breached and probably no trade information can leak
 (23) out so nobody can steal, you know, your clients from 15
 (24) years ago. Any problem with that?
 (25) (No response.)
 (26)
 (27)
 (28)
 (29)
 (30)
 (31)
 (32)
 (33)
 (34)

Page 38

(1) That's something - that's something you can
 (2) easily work out and if you need this - if you do need a
 (3) protective order then - then like if you can't agree then
 (4) you'd have to come to me and I'll make provision for
 (5) confidentiality but I can see that this - everybody here is
 (6) a businessperson and I'm sure everybody has the same
 (7) interest in keeping their - keeping this type of
 (8) information private.
 (9) Ms. Mehta?
 (10) MS. MEHTA: Yes, Judge. Your Honor, while the
 (11) Bureau doesn't actually want to see the documents provided
 (12) we would ask that the parties provide us with an inventory
 (13) of the documents provided in response to discovery requests.
 (14) JUDGE STEINBERG: You mean just like an index?
 (15) MS. MEHTA: Yes.
 (16) JUDGE STEINBERG: Okay. I suppose there would be
 (17) an index, anyway, and - I mean if - yeah, okay. That's -
 (18) that's reasonable. You could send the index to me, too,
 (19) that way I kind of have an idea.
 (20) Now there's a general statement that I always make
 (21) with respect to discovery and that is that it's a very self-
 (22) serving statement and that is that I don't really want to be
 (23) bothered with discovery stuff. So I want - if a dispute
 (24) arises I want you to make a good faith attempt to try to
 (25) resolve the dispute among yourselves or between yourselves,
 (26)
 (27)
 (28)
 (29)
 (30)
 (31)
 (32)
 (33)
 (34)

Page 39

(1) not just a token effort but a real effort.
 (2) Don't ask me for any kind of discovery ruling
 (3) before you genuinely attempt to reach agreement yourselves.
 (4) If you absolutely can't reach an agreement then you file
 (5) something with me and I'll settle the matter probably to the
 (6) dislike of both of you. It's much better to reach a
 (7) compromise than to risk whatever it is your risking.
 (8) In that vain, if you file a pleading with me with
 (9) respect to discovery in order to contain a certification
 (10) that you attempted to work out your differences but just
 (11) absolutely couldn't do it. I think the Federal Rules
 (12) contain a - the FCC's rules, the hearing rules, don't
 (13) contain that requirement but I like to have it because it
 (14) gives people maybe second thoughts about coming to me
 (15) initially. While we're on this area, in this area, there's
 (16) something called supplemental complaints and what? Answers?
 (17) MS. MEHTA: Mm-hmm.
 (18) JUDGE STEINBERG: And I read - it's 1.722(c) is
 (19) that it? Is that the right rule? I read that through
 (20) yesterday. I mean I'm not - I'm the first to admit, I'm
 (21) not familiar with that portion of the rules that's got to do
 (22) with formal and informal complaints and supplemental
 (23) complaints and accelerated documents and stuff like that but
 (24) what I want - what I'd like to know is what useful purpose,
 (25) if any, would be served by filing supplemental complaints
 (26)
 (27)
 (28)
 (29)
 (30)
 (31)
 (32)
 (33)
 (34)

Page 40

(1) now?
 (2) I mean this is the hearing that some people wanted
 (3) and some people didn't want and now is the time for
 (4) everybody to discover what everybody else has and kind of
 (5) prove your case or not prove your case and how will
 (6) supplemental complaints advance that or not advance it? I
 (7) mean I just - I don't - again I can guess but I don't
 (8) know. Now does anybody want to address that? Okay, Mr.
 (9) Jackson?
 (10) MR. JACKSON: Your Honor, it would be advantageous
 (11) because I think it could facilitate settlement discussions
 (12) if the Complainants were to tell each Defendant exactly what
 (13) the dollar amount is that they're asking for.
 (14) JUDGE STEINBERG: That gets us back to last August
 (15) 3rd I think, doesn't it?
 (16) MR. JACKSON: Well, it may.
 (17) JUDGE STEINBERG: August 2000?
 (18) MR. JACKSON: It may. But to date I, for example,
 (19) have never seen any on behalf of SPRINT any calculation of
 (20) the actual dollar amount of damages that -
 (21) JUDGE STEINBERG: The time period. Mr. Bruggeman
 (22) mentioned time period, too.
 (23) MR. JACKSON: Mm-hmm.
 (24) JUDGE STEINBERG: Do you have problems - do you
 (25) have a problem with time periods?
 (26)
 (27)
 (28)
 (29)
 (30)
 (31)
 (32)
 (33)
 (34)

EXHIBIT B

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

C.F. Communications Corp., et. al.,

V.

Defendants.

File No. E-93-49

and

**COMPLAINANT'S RESPONSES AND OBJECTIONS TO
DEFENDANT SOUTHWESTERN BELL TELEPHONE COMPANY'S
FIRST SET OF INTERROGATORIES TO COMPLAINANT**

GENERAL RESPONSES AND OBJECTIONS

1311552 v1: S400011.DOC

2. Where the information requested by these Interrogatories is ascertainable from documents in the possession, custody, or control of Complainant, and the burden of ascertaining or deriving the information from such records is the same for Defendant as for Complainant, Complainants will make such documents available for inspection and review by Defendant. The fact that Complainant produces documents to Defendant, or makes documents available for inspection and review by Defendant, however, does not mean that such documents provide evidence of all ANIs for the telephone lines that Complainant had in service during the relevant time period or provide evidence of all damages incurred by Complainant due to Defendant's unlawful imposition of EUCL charges. Rather, additional information or documents from Defendant may be needed to ascertain all the ANIs for the telephone lines that Complainant had in service or all the damages that Complainant incurred as a result of the EUCL charges billed by Defendant.

3. Complainant will produce documents to Defendant, and make documents available for inspection and review by Defendant, provided that Defendant signs an appropriate confidentiality agreement.

4. Complainant objects to these Interrogatories to the extent that they seek any information or material that is subject to the attorney-client privilege or the common interest privilege or information or material that was prepared in anticipation of litigation or that otherwise constitutes protectable work product.

5. Complainant objects to these Interrogatories as unduly burdensome to the extent that they seek information that is already in the possession of Defendant through Defendant's records or otherwise.

6. The term "SBC," "Southwestern Bell Telephone Company," or "Defendant," as used in these Responses, Objections, and General Objections shall be

defined to include the Defendant, Southwestern Bell Telephone Company ("SBC"), SBC Telecommunications, Inc., and any and all of these entities' predecessors, successors, or other names under which Defendant has operated, including, but not limited to, Southwestern Bell Telephone Company and SBC, as well as any agents, attorneys, employees, or other persons or entities acting on behalf of these entities.

RESPONSES AND OBJECTIONS

1. Please give the following:

- (a) the identity of the person or persons answering these interrogatories;
- (b) the identity of all persons consulted in answering these interrogatories, including the individual number or numbers of interrogatories as designated herein with regard to which each such person was consulted.

Response:

Subject to the foregoing General Objections, Complainant answers this Interrogatory as follows: (a) Larry Ginsburg, New York City Telecommunications Company, Inc., 5101 15th Avenue, Brooklyn, NY, 11219, (718) 686-7711; (b) Larry Ginsburg, New York City Telecommunications Company, Inc., 5101 15th Avenue, Brooklyn, NY, 11219, (718) 686-7711; Delores Smith, 3029 Staffordshire Blvd., Powell, Tennessee 37849, (865) 938-4101; Paul Evangelista, 95 Essex Drive, Apt. 1D, Staten Island, New York 10314, (718) 761-4524; Nick Yagnik, 1618 Gray Bark Drive, Oldsmar, FL 34677, (813) 891-1342. Each of these persons was consulted regarding each of the Interrogatories propounded by Defendant.

2. Please give the following:

- (a) Please state your full legal name or names as well as any aliases, trade names or other DBAs (names under which you do business); and,
- (b) If a natural person or person, please state your complete street address, telephone number and Social Security Number; or
- (c) If a business entity or entities, please state the complete business street address and main telephone number for your principal place of business.

Response:

Subject to the foregoing General Objections, Complainant states that its full legal name is New York City Telecommunications Company, Inc., and its address and telephone number is 3029 Staffordshire Blvd., Powell, TN 37849, (865) 938-4101. Complainant does business under the name of New York City Public Telephone Company.

3. In its Complaint filed with the FCC in this formal complaint case, Millicom Services Company asserted that it was “a New York partnership with its principal place of business at 555 63rd Street, Brooklyn, New York 11220....” With respect to that allegation, please identify all of the partners of Millicom Services Company and, with each individual partner, please provide the following:

- (a) If a natural person, the identity of the person;
- (b) If a legal entity, the identity of that entity and

(1). If all or some of the partners are corporations, then for each such partner the state of incorporation, its principal place of business, and the identity of its principal officers (president, secretary, and treasurer);

(2). If all or some of the partners are other partnerships, then the identity of each partner in each such partnership.

Response:

Subject to the foregoing General Objections, Complainant states that the partners of Millicom Services Company were Millicom Telecommunications Services, Inc., Coin Com Holdings, Inc., and Mega Telephone, Inc. The address of the principal place of business for Millicom Telecommunications is not presently known to Complainant. The address of the principal place of business for Coin Com Holdings, Inc. is 3029 Staffordshire Boulevard, Powell, Tennessee 37849. Coin Com Holdings, Inc. was incorporated in the State of Nevada. The President of Coin Com Holdings, Inc. is Denton Jones and the Secretary/Treasurer of Coin Com Holdings, Inc. is Delores Smith. The address of the principal place of business for Mega Telephone, Inc. is 4 Uxbridge Street, Staten Island, New York 10314. The remaining information requested in this Interrogatory is not presently known to Complainant. Complainant is attempting to obtain this information and will provide any such information obtained in a Supplemental Response to this Interrogatory.

4. In its Complaint filed with the FCC in this formal complaint case, Millicom Services Company asserted that it was “the successor in interest to Millicom Telecommunications Services, Inc., who provided independent public payphones in defendant’s territory,....” With respect to this allegation, please state all facts, information,

and circumstances by which Millicom Services Company became the "successor in interest to Millicom Telecommunications Services Inc."

Response:

Subject to the foregoing General Objections, Complainant states that in February 1990, Millicom Telecommunications Services, Inc. entered into a Joint Venture with Cointel Communications, Inc. called Millicom Services Company. Millicom Telecommunications Services, Inc. contributed all its 1,012 payphones to Millicom Services Company pursuant to this joint venture.

5. If you are a corporation or corporations, please state:

- (a) State of incorporation;
- (b) Date of incorporation;
- (c) The identity of the president, secretary, treasurer, and agent for service of process.

Response:

Subject to the foregoing General Objections, Complainant states that it was incorporated in the State of Nevada in 1993 as ATI Services, Inc., then subsequently changed its name to MSC Services, Inc. and then to New York City Telecommunications Company, Inc. The President of Complainant is Denton Jones. The Vice President of Complainant is Larry Ginsburg. The Secretary/Treasurer of Complainant is Delores Smith. Information on the agent for service of process of Complainant is being obtained and will be provided to Defendant in a Supplemental Response to this Interrogatory.

6. If you are a partnership, please:

- (a) Identify all the partners;
- (b) State the name of the state whose laws govern the partnership; and
- (c) State whether there is a written partnership agreement governing the partnership.

Response:

Subject to the foregoing General Objections, Complainant states that it is not a partnership.

7. If you contend that the present Complainant is "New York City Telecommunications Company, Inc." (NYCTC) then please state the following:

- (a) All facts, information, and circumstances that you believe support or tend to support your contention that NYCTC is entitled to assert claims for damages in this formal complaint case for or in the place of Millicom Services Company;
- (b) The identify of all persons with knowledge of any such facts, information, and circumstances;
- (c) The identity of all documents and/or tangible things that support or tend to support your contention that NYCTC is entitled to assert claims for damages in this formal complaint case in the place of Millicom Services Company.

Response:

Subject to the foregoing General Objections, Complainant states that in November 1993, Millicom Services Company sold its assets to ATI Services, Inc. Thereafter, in January 1994, ATI Services, Inc. changed its name to MSC Services, Inc. MSC Services, Inc. then changed its name in January 1997 to New York City Telecommunications Company, Inc. (d/b/a New York City Public Telephone Company). The persons with

knowledge of the facts relating to this Interrogatory consist of those individuals identified in response to Interrogatory Number 1. The documents that support the information contained in the response to this Interrogatory are the documents reflecting these corporate transactions and name changes. Complainant will make any such documents in Complainant's possession, custody, or control available for Defendant's inspection, copying, and review.

8. If you contend that the present Complainant is "New York Telecommunications" (NYT) then please state the following:

- (a) All facts, information, and circumstances that you believe support or tend to support your contention that NYT is entitled to assert claims for damages in this formal complaint case for or in the place of Millicom Services Company;
- (b) The identity of all persons with knowledge of any such facts, information, and circumstances;
- (c) The identity of all documents and/or tangible things that support or tend to support your contention that NYT is entitled to assert claims for damages in this formal complaint case in the place of Millicom Services Company.

Response:

Subject to the foregoing General Objections, Complainant states that it does not contend that the present Complainant is "New York Telecommunications."

9. With respect to your claim for damages in this formal complaint case, please identify each individual believed to have firsthand knowledge of the facts alleged with particularity in the complaint, along with a description of the facts within any such

individual's knowledge, providing, among other things the name, address, and position of each such individual. *See, Commission Rule 1,721(a)(10)(I).*

Response:

Subject to the foregoing General Objections, Complainant states that the following individuals have firsthand knowledge of the facts alleged in Complainant's formal complaint: (a) Larry Ginsburg, 5101 15th Avenue, Brooklyn, NY, 11219, (718) 686-7711; (b) Delores Smith, 3029 Staffordshire Blvd., Powell, TN 37849, (865) 938-4101; (c) Paul Evangelista, 95 Essex Drive, Apt. 1D, Staten Island, NY 10314, (718) 761-4524; and (d) Nick Yagnik, 1618 Gray Bark Drive, Oldsmar, FL 34677, (813) 891-1342. Each of these individuals has knowledge regarding the payphones owned and/or serviced by Complainant during the relevant time period, the EUCL charges billed by SBC on such payphones, the EUCL and other charges paid by Complainant, the records regarding Complainant's payphone business during the relevant time period, and the general operation of Complainant's payphone business during the relevant time period.

10. With respect to your claim for damages in this formal complaint case, please provide a description of all documents, data compilations, and tangible things in your possession, custody, or control, that are relevant to that claim. Such description shall include for each document:

- (a) The date it was prepared, mailed, transmitted, or otherwise disseminated;
- (b) The author, preparer, or other source;
- (c) The recipient(s) or intended recipient(s);

- (d) Its physical location; and
- (e) A description of its relevance to the matters contained in the complaint.
See, Commission Rule 1.721(a)(10)(ii).

Response:

Subject to the foregoing General Objections, Complainant states that the documents, data compilations, and tangible things in its possession, custody, or control that are relevant to its claim for damages include (a) phone bills sent by SBC to Complainant imposing the EUCL charges; (b) various business records, including service records, coin collection records, cancelled checks, vendor files, contract documents, and corporate transaction documents. These documents, which are voluminous, are located at New York City Telecommunications Company, Inc., 7157 Clinton Highway, Unit H17, Powell, Tennessee 37849, (865) 938-4101. Because the burden of ascertaining or deriving the additional information necessary to answer this Interrogatory from these records is the same for Defendant as for Complainant, Complainant will make these records available to Defendant for inspection, copying, and review.

11. (a) Please provide either a computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to determine the amount of such damages; (b) or an explanation of the information not in your possession that is necessary to develop a detailed computation of damages; why such information is unavailable to the complaining party; the factual basis the complainant has for believing that such evidence of damages exists; and a detailed outline of the methodology that would

be used to create a computation of damages with such evidence. *See, Commission Rule 1.722(c).*

Objection:

Complainant objects to this Interrogatory because Defendant, as the provider of the telephone lines to which Complainant's phones were connected, already has the information requested in this Interrogatory within its possession, custody, or control.

Response:

Subject to this specific objection and the foregoing General Objections, Complainant states that Complainant seeks recovery of the amount that it paid in EUCL charges to SBC from 1987 forward, plus interest on this amount. The EUCL charges were imposed as a flat fee per telephone line in operation per month. The damages, other than interest, that Complainant incurred for any particular month can be calculated by multiplying the number of lines that Complainant had in service during a particular month by the EUCL charge rate in effect during that month for that area. The documents and materials to be used by the Complainant to determine the amount of damages, other than interest, sought by Complainant are Complainant's copies of the phone bills sent by SBC to Complainant imposing such charges, the cancelled checks and other business records, and such records, including billing records, that Complainant obtains from Defendant in discovery in this proceeding.

A complete, accurate, and detailed computation of the damages Complainant incurred for the period through April 16, 1997 can be completed after Defendant produces information and documents within the Defendant's possession, custody, or control,

including information regarding the installation date and suspension or disconnect date for each ANI Complainant had in service, billing records, and information as to the applicable EUCL rates that the Defendant had in effect during the relevant period. With this information, the time periods during which each of the ANIs Complainant had in service could be obtained, and then the applicable EUCL rates could be multiplied by the number of lines in service each month to determine the amount of damages incurred by Complainant. The information is not readily available to Complainant because Complainant has not verified whether the records in its possession, custody, or control regarding the EUCL charges billed by SBC, and paid by Complainant, including the actual phones bills, are complete, and review of the actual phone bills sent by SBC to Complainant to ascertain the amounts that Complainant paid to Defendant in EUCL charges for each telephone line is unduly burdensome in light of the voluminous nature of these records and because Defendant, as the provider of the telephone lines to which Complainant's payphones were connected, has this information readily in its possession. Using the method of computation described above, Defendant can use the information within its possession, custody, or control to calculate Complainant's damages as easily as Complainant can calculate such damages.

12. Please disclose the identity of each and every person who may be used at the hearing or otherwise in this formal complaint case to present evidence in any format under Fed. R. Evid. 702, 703, or 705 (e.g., any and all expert witnesses) and, with respect to each one individually, please provide the following:

- (a) a complete statement of all opinions to be expressed and the basis and reasons therefor;
- (b) the data or other information considered by the witness in forming those opinions;
- (c) any exhibits to be used as a summary of or support for those opinions;
- (d) the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years;
- (e) the compensation to be paid for any study and for the testimony of the witness; and
- (f) a listing of any other cases in which the witness has testified at trial or by deposition within the preceding four years. *See, Fed. R. Civ. P. 26(a)(2).*

N.B.: In addition to any witness who has been retained or specially employed to provide expert testimony in this matter, such persons shall include any present or former employees of the Complainant whose duties as an employee of the Complainant either regularly involved or do regularly involve giving expert testimony.

Response:

Subject to the foregoing General Objections, Complainant states that it has not yet determined what witnesses, either expert or lay, that it will call at the hearing in this matter or the subject matter on which such witnesses will testify. When this determination is made, Complainant will provide this information to Defendant in a Supplemental Response to this Interrogatory.

13. Please identify each and every payphone for which you contend that an EUCL charge was unlawfully assessed by Southwestern Bell and, with respect to each such payphone individually, please provide the following information:

- (a) The telephone number assigned to that phone;

- (b) The location of that phone;
- (c) The identity of the premises owner where the phone was located;
- (d) Whether you contend the phone was a “public payphone” or a “semi-public payphone,” stating the facts, information and circumstances that you contend support or tend to support your assertion;
- (e) The date of installation and, if applicable, discontinuance of service to that payphone by Southwestern Bell.

Objection:

Complainant objects to this Interrogatory because Defendant, as the provider of the telephone lines to which Complainant’s payphones were connected, already has the information requested in this Interrogatory within its possession, custody, or control.

Response:

Subject to this specific Objection and the foregoing General Objections, Complainant states that the ANIs of the telephone lines that Complainant used to provide public payphone service for which Complainant was wrongfully assessed EUCL charges by SBC are set forth in various records, including: (a) phone bills sent by SBC to Complainant imposing the EUCL charge; and (b) various business records, including service records, coin collection records, cancelled checks, vendor files, and contract documents. These records are voluminous, and an accurate identification of all the ANIs of the telephone lines that Complainant used to provide public payphone service can only be ascertained through review of the information and documents in Defendant’s possession, custody, or control, either alone or in combination with the records referenced above.

Each of Complainant’s payphones was a public payphone. Unlike Defendant’s business, Complainant’s business was focused on public pay telephones. Each of the telephones owned, installed, and/or serviced by Complainant were subscribed to telephone

service that is tarified by Defendant as “public” telephone service, and each of the telephones owned, installed, and/or serviced by Complainant were installed for public use, rather than for the use of any specific customer or premises owner of for “a combination of general public and specific customer need.” Various attributes of Complainant’s payphones, while overlapping and not required to establish their public purpose and use, support the conclusion that Complainant’s payphones were for public use. The location of Complainant’s payphones, for instance, were chosen based on a determination of where there would be the most public traffic and where the payphones would be most available to the public. Even in those instances where Complainant installed a pay telephone indoors, such pay telephone was placed in the area where the pay telephone would be most available to the public. As a matter of business practice, Complainant did not install pay telephones to meet a specific customer need or the specific needs of a location owner or manager. In fact, the vast majority of Complainant’s payphones, as installed and subscribed, were not even capable of receiving incoming calls. It was Complainant’s practice, both currently and during the time period relevant to this proceeding, to select locations for its payphones on the basis of coin revenue potential, meaning locations that are available to the largest number of end users. Such locations are public places.

Because the burden of ascertaining or deriving the information necessary to answer the remaining information requested in this Interrogatory from the relevant records is the same for Defendant as for Complainant, Complainant will make the relevant, non-privileged documents in its possession, custody, or control available to Defendant for inspection and review at New York City Telecommunications Company, Inc., 7157 Clinton Highway, Unit H17, Powell, Tennessee, 37849.

14. Please describe your relationship to and/or business dealing with the following entities, including, but not limited to, any dealings with them at any time from and including November 1990 through the present.

- (a) Millicom, Inc.
- (b) Cointel Communications, Inc.
- (c) Peoples Telephone Company, Inc.
- (d) Millicom Telecommunications Service
- (e) ETS Payphones, Inc.
- (f) New York City Telecommunications Company, Inc.
- (g) New York Telecommunications

Objection:

Complainant objects to this Interrogatory because it is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks confidential and proprietary business information, particularly to the extent it seeks information regarding Complainant's "business dealings" with any of these entities.

Response:

Subject to this specific Objection and the foregoing General Objections, Complainant states that it does not currently have any relationship or business dealings with any entities named Millicom, Inc. or New York Telecommunications, and has not had any relationship or business dealings with any such entities during the time period from November 1990 through the present. Cointel Communications, Inc. was one of the two

companies that entered into a joint venture called Millicom Services Company in February 1990. Peoples Telephone Company was an entity that purchased Complainant's payphones in the State of Texas in approximately late 1992 or early 1993. Complainant is not aware of any entity by the name of Millicom Telecommunications Service, but Millicom Telecommunications Services, Inc. is an entity that entered into the joint venture called Millicom Services Company with Cointel Communications in February 1990. In February 1998, Complainant New York City Public Telephone Company sold certain assets to MSC National, which then sold its stock and assets (including payphones) to ETS Payphones, Inc.

15. For the period from and including November 1, 1990 through and including April 30, 1997, please identify each and every person or entity that owned pay telephone equipment in Texas and/or purchased telephone service from Southwestern Bell for the provisioning of pay telephone service for whom or on whose behalf you seek to recover damages against Southwestern Bell in this formal complaint case, giving the applicable periods of ownership and/or purchase for each such person or entity.

Objection:

Complainant objects to this Interrogatory because Defendant, as the provider of the telephone lines to which Complainant's payphones were connected, already has the information requested in this Interrogatory within its possession, custody, or control. Complainant also objects because this Interrogatory is overbroad.

Response:

Subject to this specific Objection and the foregoing General Objections, Complainant states that the for the period from November 1990 through the present, it believes the following entities owned pay telephone equipment in Texas and/or purchased telephone service from Southwestern Bell for the provisioning of pay telephone service for whom on or whose behalf Complainant seeks to recover damages in this case: Cointel Communications, Inc. from approximately February 1990 forward; Millicom Telecommunications Services, Inc. from approximately February 1990 through approximately June 1993; Millicom Services Company from approximately February 1990 through approximately November 1993; ATI Services, Inc. from approximately June 1993 through approximately January 1994; MSC Services, Inc. from approximately January 1994 through approximately January 1997; MSC National, Inc. from approximately January 1995 forward; N-Teck Corp from approximately January 1995 forward; New York City Telecommunications Company, Inc. (d/b/a New York City Public Telephone Company) from approximately January 1997 forward.

16. With respect to your allegation that Millicom Services Company had “approximately 200 IPP stations in the State of Texas” (see *Complaint*, p.3), please state whether the same IPP stations were sold to Peoples Telephone Company, Inc. and, if so, the date of that sale.

Objection:

Complainant objects to this Interrogatory because Defendant, as the provider of the telephone lines to which Complainant's payphones were connected, already has the information requested in this Interrogatory within its possession, custody, or control.

Response:

Subject to this specific Objection and the foregoing General Objections, Complainant states that the "200 IPP stations" referenced in Complainant's Complaint were sold to Peoples Telephone Company in late 1992 or early 1993.

17. By letter addressed to Mr. Charles Scharnberg, dated September 20, 2000, your attorney, Charles V. Mehler, III, advised defendant that your "revised estimate of EUCL charges imposed by SBC [presumably Southwestern Bell] on New York Telecommunications (Millicom)" was \$120,708.13. With respect to this assertion, please: (a) state whether this figure is still your current, best estimate of the EUCL charges assessed by SWBT and, if not, what the new figure is; and (b) give all facts, circumstances, and information supporting your claim of the total amount of EUCLs assessed by SWBT, explaining how this figure was arrived at.

Objection:

Complainant objects to this Interrogatory because the September 20, 2000 letter referenced in the Interrogatory, and the revised estimate contained therein, were communicated to counsel for Defendant as part of efforts to settle the claim brought by Complainant. Accordingly, reference to, and citation of, this letter and the revised estimate

of EUCL charges in this Interrogatory constitutes a violation of Rule 408 and the principle of confidentiality of settlement negotiations. Complainant further objects to this Interrogatory because it seeks information protected by the attorney-client privilege and/or work product doctrine.

Response:

Subject to this specific objection and the foregoing General Objections, Complainant states that the information regarding the damages that Complainant has sustained, other than interest, as a result of Defendant's unlawful imposition of EUCL charges on Complainant's telephone lines is set forth and/or can be ascertained from, the documents identified in Complainant's response to Interrogatory Number 13. Because the burden of ascertaining or deriving the information necessary to answer this Interrogatory will make the non-privileged documents in Complainant's possession, custody, or control that support Complainant's claim for damages from unlawfully accessed EUCL charges available for Defendant's inspection, copying, and review at New York City Telecommunications Company, Inc., 7157 Clinton Highway, Unit H17, Powell, Tennessee 37849, (865) 938-4101 and/or at the offices of Dickstein Shapiro Morin & Oshinsky, LLP, 2101 L Street, NW, Washington, DC 20037-1526, (202) 785-9700 to the extent such documents are not protected by the attorney-client privilege and/or the work product doctrine.

18. In your attorney's letter of September 20, 2000, addressed to Mr. Charles Scharnberg, attorney for Southwestern Bell, you were identified as "New York

Telecommunications” and in your attorney’s letter to Judge Arthur I. Steinberg, dated June 1, 2001, you were identified as “New York City Telecommunications Company, Inc.” With respect to these two letters, please whether you are “New York Telecommunications” or “New York City Telecommunications Company, Inc.” or whether you have any other legal or trade names or names under which you do or have done business (DBAs).

Objection:

Complainant objects to this Interrogatory because the September 20, 2000 letter referenced in the Interrogatory was communicated to counsel for Defendant as part of efforts to settle the claim brought by Complainant. Accordingly, reference to, and citation of, this letter in this Interrogatory constitutes a violation of Rule 408 and the principle of confidentiality of settlement negotiations. Complainant further objects to this Interrogatory because it seeks information protected by the attorney-client privilege and/or work product doctrine.

Response:

Subject to this specific objection and the foregoing General Objections, Complainant states that its current name is New York City Telecommunications Company, Inc. Complainant previously did business and/or received bills under various names, including: Public Coin Phone Systems; Metrotel Communications, Inc.; Coinmach Telephone, Inc.; Cointel Communications, Inc.; Millicom Telecommunications Services, Inc.; Public Telecommunications Associates LLP I; Public Telecommunications Associates

LLP II; MSC National, Inc.; Millicom Services Company; ATI Services, Inc.; MSC Services, Inc.; and NYC Public Telephone Company.

As to Specific and General Objections:

Dated: July 18, 2001

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202)785-9700
Attorneys for Complainants

By: Katherine J. Henry
Katherine J. Henry
Albert H. Kramer

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2001, a copy of the foregoing Complainant's Responses and Objections to Defendant's First Set of Interrogatories was served by facsimile and first-class mail, postage prepaid, on William A. Brown and Davida M. Grant, Southwestern Bell Telephone Company, 1401 I Street, NW, Suite 1100, Washington, DC 20005, and by first-class mail, postage prepaid, on the following parties:

The Honorable Arthur I. Steinberg
Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Room 1-C861
Washington, DC 20554

Magalie Roman Salas, Secretary
Office of the Commission Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554
(Original and Three Copies)

Tejal Mehta, Esquire
Federal Communications Commission
Market Disputes Resolution Division
Enforcement Bureau
445 12th Street, S.W.
Washington, D.C. 20554

David H. Solomon, Chief
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554


Michael Thompson, Esquire
Wright & Talisman, P.C.
1200 G Street, N.W.
Washington, D.C. 20005

John M. Goodman
Verizon
1300 I Street, NW 400W
Washington, DC 20005

Sherry A. Ingram
Verizon
1320 North Court House Road
Arlington, VA 22201

Rikke Davis, Esquire
Sprint Corporation
401 9th Street, N.W., Suite 400
Washington, D.C. 20004

Mary Sisak, Esquire
Robert Jackson, Esquire
Blooston, Mordkowsky, Dickens, Duffy & Prendergast
2120 L Street, N.W., Suite 300
Washington, D.C. 20037

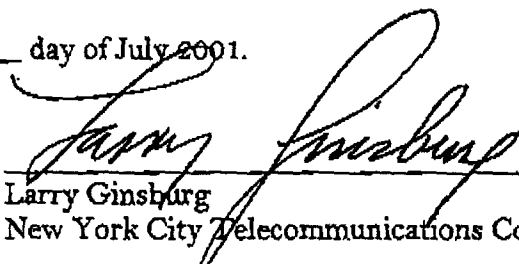


Charles V. Mehler III

DECLARATION OF LARRY GINSBURG

I, Larry Ginsburg, hereby declare and state that I have read the foregoing, "Complainant's Responses and Objections To Defendant Southwestern Bell Telephone Company's First Set of Interrogatories to Complainant," and hereby certify that the statements contained therein answering the Defendant's interrogatories are true and correct to the best of my knowledge and belief.

Signed and dated this ____ day of July 2001.



Larry Ginsburg
New York City Telecommunications Co., Inc.